

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE ST. PAUL CITY COUNCIL

In the Matter of the Adverse Action  
Against the Licenses Held by Hmong  
American Partnership d/b/a Hmong  
American Partnership for the Premises  
Located at 1075 Arcade Street in  
St. Paul, Minnesota.

**FINDINGS OF FACT,  
CONCLUSIONS,  
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on February 1, 2007, at City Hall in St. Paul, Minnesota. The record closed February 22, 2007, upon receipt of post-hearing briefs.

Rachel Gunderson, Assistant City Attorney, 400 City Hall, 15 West Kellogg Blvd., St. Paul, Minnesota 55102, appeared on behalf of the Office of License, Inspections and Environmental Protection (LIEP).

Robin Christopher Vue-Benson, Vice-Chair, Board of Directors, 1075 Arcade Street, St. Paul, MN 55106, appeared on behalf of the Hmong American Partnership (Licensee).

**STATEMENT OF ISSUE**

Should adverse action be taken against the Licensee because it failed to comply with a license condition requiring that one or more security persons be present at all functions taking place in its community room?

The Administrative Law Judge concludes that the Licensee complied with the license condition and that adverse licensing action is not justified.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. The Hmong American Partnership is a social services agency that provides job training, employment services, and programs for young and elderly Hmong Americans. Its main location is at 1075 Arcade Street in St. Paul, although it has other locations in St. Paul and Minneapolis. The Arcade Street premises are composed of a new two-story building, completed in October 2005, and a rear parking lot with 84 parking spaces. On the first floor of the building are several offices (including the office

of the finance director), a reception area and desk, and a community room; the second floor contains more office space.<sup>[1]</sup>

2. The Hmong American Partnership holds after-school programs in the community room during the week. On weekends, the room is available on a limited basis to rent for private events.<sup>[2]</sup> Rental of the community room requires a rental hall license from the City of St. Paul. This class of license requires that notice of the application be given to the neighborhood.<sup>[3]</sup>

3. William Yang, Executive Director of the Hmong American Partnership for the past 12 years, applied for the rental hall license in June 2005.<sup>[4]</sup>

4. The LIEP Office recommended approval of the license with certain conditions. Because of neighborhood concerns about the noise associated with large events, LIEP added additional conditions. A legislative hearing officer agreed with the conditions recommended by LIEP, and the Hmong American Partnership agreed to all of the conditions before the St. Paul City Council approved the license.<sup>[5]</sup>

5. The rental hall license of the Hmong American Partnership limits the operating hours for rental hall activities and precludes the serving of any alcoholic beverages at events covered by the license. It also contains, in relevant part, the following conditions:

The licensee shall be responsible for insuring that one or more security persons are on duty at all functions taking place at the hall. Security shall remain until all patrons, guests and members of the public have left the area, and shall insure that no one leaving the hall loiters around or near the building. (a) If an event is anticipated to involve 100 or more people, the Hmong American Partnership will notify the Saint Paul Police Department East Team at least two weeks in advance of such rental hall events and shall cooperate with Police Department recommendations for providing appropriate number of security personnel and for implementing any other security measure they deem necessary for crowd control. (b) If an event is anticipated to involve fewer than 100 people, the Hmong American Partnership will notify the Saint Paul Police Department East Team within 48 hours of the scheduled event.<sup>[6]</sup>

6. At present there are 12 other licensed rental halls in the City. Only one of them has a license condition requiring security at all events, and this license holder is permitted to allow the consumption of alcoholic beverages on the premises.<sup>[7]</sup>

7. After the license was issued to Hmong American Partnership, Mr. William Yang contacted the St. Paul Police Department East Team to discuss the licensing conditions and explained that the organization would have a staff person on the premises to provide security during all events. It has provided notice to the St. Paul Police Department of all events since October 2005. The police department has never

recommended that additional security be present at any event held in the community room.<sup>[8]</sup>

8. Initially, Mr. William Yang attempted to be present at all weekend events for which the community room was rented. In approximately March 2006, the organization hired Pengsue Yang to function as the staff person at these events. Pengsue Yang works full-time at 3M Company but agreed to work at the Hmong American Partnership on a part-time basis for weekend events. His job is to open and close the building, collect rental fees, assist patrons with lights and equipment such as projectors, and oversee security. Pengsue Yang's supervisor is the finance director, Ed Sriharatsa. While events are taking place in the community room, Pengsue Yang generally sits in the finance director's office on the first floor of the building.<sup>[9]</sup>

9. In August 2006, the City took adverse action against the Hmong American Partnership's rental hall license by imposing a \$500 fine for operating after permitted hours. The Licensee paid the fine without contesting it.<sup>[10]</sup>

10. On Sunday, November 19, 2006, there was a large family gathering scheduled from 10:00 a.m. to 5:00 p.m. in the community room. The event included a meal and a slide show of photographs taken at a Hmong refugee camp. Pengsue Yang was the staff person in attendance. The organization's finance director also attended the event during the afternoon.<sup>[11]</sup>

11. At approximately 3:00 p.m. that afternoon, Katie Becker, the proprietor of Acme Tattoo (located at 1045 Arcade Street), called the police to report a disturbance at the Hmong American Partnership building. When an officer arrived at the tattoo shop, Becker complained that there was an event going on at the Hmong American Partnership building and that she did not think security was present. She showed the officer a list of the license conditions, which the officer reviewed before going down the block to 1075 Arcade Street.<sup>[12]</sup>

12. When the officer entered the Hmong American Partnership building, there was no one at the reception desk. He went into the community room, where he found approximately 150 to 200 people having what appeared to be a "business meeting with food." There was no disturbance. He tried to locate someone in charge of the event and spoke to two people who were part of the family group that had rented the room. He asked them if they had security present, and they responded that they did not. The family members told the officer that they had been told to call police if there was a problem.<sup>[13]</sup> The police officer left the premises without speaking to Pengsue Yang.<sup>[14]</sup>

13. Based on the police report concerning this incident, LIEP issued a Notice of Violation for failure to have security at the event on November 29, 2006. LIEP recommended that a \$1,000 fine be assessed based upon the penalty matrix set forth in the St. Paul Legislative Code, because this was a second alleged violation of a license condition. The Notice of Violation informed the Licensee of the nature of the violation,

the proposed fine, and the opportunity to request a hearing before an Administrative Law Judge.<sup>[15]</sup>

14. By letter dated December 8, 2006, the Licensee requested a hearing before an Administrative Law Judge.<sup>[16]</sup>

15. On December 20, 2006, the City Attorney's office issued the Notice of Hearing setting the hearing for February 1, 2007.<sup>[17]</sup> The hearing took place as scheduled.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction to hear this matter pursuant to St. Paul Legislative Code § 310.05.

2. The City of St. Paul gave proper notice of the hearing and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. As the party proposing that certain action be taken, the City has the burden of proving facts at issue by a preponderance of the evidence.<sup>[18]</sup>

4. The St. Paul Legislative Code authorizes the City Council to take adverse action against any or all of the licenses held if the licensee has failed to comply with any condition set forth in the license, or set forth in the resolution granting or renewing the license.<sup>[19]</sup>

5. The Hmong American Partnership's license provides that the licensee shall be responsible for insuring that one or more security persons are on duty at all functions taking place at the hall. Security shall remain until all patrons, guests and members of the public have left the area, and shall insure that no one leaving the hall loiters around or near the building.

6. The Hmong American Partnership had a staff person present to provide security during the November 19, 2006, event. The presence of this staff person was sufficient to comply with the license condition requiring security at such events.

Based upon the above Conclusions of Law, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the St. Paul City Council take no disciplinary action against the licenses held by the Hmong American Partnership.

Dated: February 27, 2007.

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Tape recorded (four tapes; no transcript prepared).

### **MEMORANDUM**

The Deputy Director of LIEP agrees that the requirement to have one or more security persons on duty during all events means that someone must be assigned to provide security and deal with potential issues concerning noise and loitering. It does not mean that the Hmong American Partnership must hire an off-duty police officer or private security guard, in uniform, to attend all events.<sup>[20]</sup> The City issued the Notice of Violation based on the assumption, reflected in the police officer's report, that no one was present to provide security at the event.

The police officer testified candidly that he did not remember who he talked to in the community room but believed the two persons with whom he spoke were guests at the event, not staff persons employed by the organization. He did not recall ever speaking to Pengsue Yang. The City has not seriously challenged Pengsue Yang's testimony that he was in fact present during the event. This testimony is corroborated by the organization's payroll records and the testimony of Mr. William Yang, the executive director. The record compels the conclusion that the use of a staff person to provide security at these events is sufficient to comply with the license condition and that, in this instance, the police officer left the building without ever speaking to the staff person on duty.

The City argues that, assuming Pengsue Yang was present, the Licensee still failed to comply with the license condition because the *renters* were not aware that Yang was acting as security during the event. This argument is unpersuasive. Perhaps the renters believed that a "security person" was someone in a uniform; perhaps they thought he was asking whether the event participants themselves had hired security; or perhaps their understanding of English was limited. In any event, the renters are not responsible for compliance with the license condition, and the reported statements of the renters, without more, are not particularly helpful in evaluating the licensee's compliance.

The City also argues that Pengsue Yang failed to fulfill the responsibility to provide security because he (1) "cannot explain how a neighbor knew there was no security in the building that day;" (2) did not notice a police officer entering the establishment; (3) had never read the license condition he was meant to satisfy; and (4) failed to adequately communicate his apparent duties to renters, and in fact told renters to call 911 if there was a problem. These arguments either assume too much or too little to support the conclusion that there was a violation of the license condition.

First, the proprietor of the tattoo shop did not testify, and she offered no explanation to the police officer for why she believed there was no security present. There is credible evidence that there was security present in the form of a staff person, who had worked these events for some time. It is the City's burden to prove a violation of a license condition; the Licensee has no obligation to explain why the proprietor of the tattoo shop may have believed one occurred. Second, the license does not require that security be posted at the door to greet or screen everyone entering the building. This was a quiet gathering of family members who were watching a slide show of photographs of a refugee camp; there was no noise or other disturbance going on that would reasonably have required the staff person to be on the lookout to greet the police at the door. Finally, the fact that Pengsue Yang had not read the license condition or communicated to the event participants that he was the security person referenced in the license condition is immaterial, given his testimony that he understood security was one of his job responsibilities.

For all of these reasons, the Administrative Law Judge concludes that there was no violation of the license condition requiring the presence of security at all events held in the community room. The proposed fine in the amount of \$1,000 should be rescinded.

K.D.S.

### **NOTICE**

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation. Under St. Paul Legislative Code § 310.05(c-1), the City Council shall provide the Licensee an opportunity to present oral or written arguments alleging error in the application of the law or the interpretation of the facts and to present argument related to the recommended adverse action contained in this Report. Parties should contact Rachel Gunderson at the address above to learn the procedure for filing exceptions or presenting argument. The St. Paul City Council is requested to serve notice of its final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>[1]</sup> Testimony of William Yang.

<sup>[2]</sup> *Id.*

<sup>[3]</sup> Testimony of Christine Rozek.

<sup>[4]</sup> Test. of W. Yang.

<sup>[5]</sup> Test. of C. Rozek.

<sup>[6]</sup> Exs. 1-1, 2. The St. Paul Legislative Code provides that every owner of a rental hall must notify police with information about an event at least 48 hours before the event is held and must comply with whatever reasonable recommendations the police make concerning security, traffic, and parking. The license condition at issue here, that security be present at all functions, is not based on a code requirement but was made a license condition based on community concerns. See St. Paul Legislative Code § 405.04(a); Test. of C. Rozek.

<sup>[7]</sup> Ex. F at 6 (Smith Avenue Rental Hall). There are no conditions requiring security at all functions for the Polish American Club, Abetto's Pizzeria & Deli, TST's Ideal Hall, Twin City Ford Local #879, Dreamland

Arts, the Minnesota Humanities Commission, Sokol Minnesota, Jonah Ogamien, the Lowry Lab Theater, or the St. Paul College Club AAUW. Some of these licensees also hold liquor licenses.

[8] Test. of W. Yang.

[9] Testimony of Pensue Yang.

[10] Ex. 1-1.

[11] Test. of P. Yang; Exs. E & H.

[12] Testimony of Officer John Raether; Ex. 3-4.

[13] *Id.*

[14] Test. of P. Yang.

[15] Ex. 4. The City initially alleged that the Licensee had also failed to notify the police of an event involving 100 or more people, but dropped that claim at the commencement of the hearing.

[16] Ex. 5.

[17] Ex. 6.

[18] Minn. R. 1400.7300, subp. 5.

[19] St. Paul Legislative Code § 310.06(b)(5).

[20] Test. of C. Rozek.